

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 26, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ZOE GETZELS and QUENTIN
BODIGUEL,

Plaintiffs,

v.

KIRBY AI, an individual; EVIE
VAUGHAN, and individual; VAN
VENTURE AI, LLC, a dissolved
Washington Limited Liability Company;
and KIRBY AI and EVIE VAUGHAN
as members of VAN VENTURE AI,
LLC,

Defendants.

No. 2:24-cv-00161-MKD

ORDER GRANTING IN PART AND
DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT

ECF No. 27

Before the Court is Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint. ECF No. 27. Henry A. Rymer represents Plaintiffs. Caleb Hatch represents Defendants. The Court has reviewed the motion and record and is fully informed. For the reasons explained below, the Court **GRANTS in part and DENIES in part** the motion.

BACKGROUND

Plaintiffs’ Second Amended Complaint asserts five claims: (1) breach of contract; (2) breach of implied contract; (3) fraudulent Inducement; (4) negligent misrepresentation; and (5) violation of the Washington Consumer Protection Act (CPA). ECF No. 26 at 22-39. First, Plaintiffs allege Defendants have “failed to comply with their contractual obligations . . . caus[ing] Plaintiffs’ damages in an amount to be proven at trial, but at a minimum over \$100,000.00.” *Id.* at 23-24 ¶¶ 35-36. Second, Plaintiff pleads “[i]n the alternative to Plaintiffs’ breach of express contract claim, Defendants were unjustly enriched and a contract implied in law is applicable to the instant case.” *Id.* at 24 ¶ 38. Third, Plaintiffs allege “Defendants Kirby and Van Venture intentionally misrepresented to Plaintiffs that they had the requisite experience and expertise to adequately convert Plaintiffs’ van in February 2022.” *Id.* at 26 ¶ 43. Fourth, Plaintiffs allege “Van Venture, through its publicly accessible website and Defendant Kirby’s representations, negligently misrepresented the then-existing fact attestations of their level of expertise in the field of van conversions to Plaintiffs.” *Id.* at 31 ¶ 54. Plaintiffs assert they “relied on the false information Van Venture provided them by agreeing to do business with Van Venture” and “[h]ad Plaintiffs known the truth regarding Van Venture’s expertise they would not have done business with them.” *Id.* at 33 ¶¶ 58-59. Finally, Plaintiffs allege all Defendants violated the CPA by engaging in “unfair

1 and deceptive acts occur[ing] in commerce or trade” that “effect the public
2 interest” and “Plaintiffs suffered injury to their property as a result[.]” *Id.* at 36 ¶¶
3 66-68.

4 **LEGAL STANDARD**

5 “To survive a [Fed. R. Civ. P. 12(b)(6)] motion to dismiss, a complaint must
6 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
7 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
8 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the
9 elements of a cause of action, supported by mere conclusory statements, do not
10 suffice.” *Id.* In considering a motion to dismiss for failure to state a claim, the
11 Court must accept as true the well-pleaded factual allegations and any reasonable
12 inference to be drawn from them, but legal conclusions are not entitled to the same
13 assumption of truth. *Id.* A complaint must contain either direct or inferential
14 allegations respecting all the material elements necessary to sustain recovery under
15 some viable legal theory. *Twombly*, 550 U.S. at 562. “Factual allegations must be
16 enough to raise a right to relief above the speculative level.” *Id.* at 555.

17 **DISCUSSION**

18 Defendants move to dismiss Plaintiffs’ Defendants Second Amended
19 Complaint in its entirety, contending Plaintiffs have failed to state a claim for all
20 causes of action asserted. ECF No. 27 at 9-26.

1 1. *Breach of Contract*

2 To establish breach of contract, Plaintiffs must demonstrate: (1) the
3 existence of a valid contract; (2) breach of that contract; and (3) resulting damages.
4 *Nw. Indep. Forest Mfrs. v. Dep't of Labor & Indus.*, 899 P.2d 6, 9 (Wash. App.
5 1995). The necessary elements of contract formation are: (1) offer; (2) acceptance;
6 (3) competent parties; (4) legal subject matter; and (5) consideration. *Lager v.*
7 *Berggren*, 60 P.2d 99, 101 (Wash. 1936). “Under Washington law, a contract
8 requires mutual assent to its essential terms in order to be binding.” *Lee v. Intelius*
9 *Inc.*, 737 F.3d 1254, 1259 (9th Cir. 2013). To sufficiently allege Defendants’
10 breach, Plaintiffs must demonstrate Defendants failed to perform a contractual duty
11 as stipulated in the contract. *Nw. Indep. Forest Mfrs.*, 899 P.2d at 9. “Damages
12 are not recoverable for loss beyond an amount that the evidence permits to be
13 established with reasonable certainty.” *Columbia Park Golf Course, Inc. v. City of*
14 *Kennewick*, 248 P.3d 1067, 1076 (Wash. App. 2011) (citing *Kadiak Fisheries Co.*
15 *v. Murphy Diesel Co.*, 422 P.2d 496, 504 (Wash. 1967)).

16 Plaintiffs’ breach of contract claim sufficiently alleges the existence of a
17 valid contract between the parties, *see* ECF No. 26 at 9-11 ¶¶ 16-18; alleges the
18 contractual terms Defendants breached, *see id.* at 23 ¶ 35; and identifies “with
19 reasonable certainty” damages that directly resulted from the alleged breach, *see*

1 *id.* at ¶¶ 34-35. The Court thus DENIES Defendants’ motion with respect to this
2 cause of action.

3 2. *Breach of Implied Contract*

4 The “elements of a contract implied in law”—or unjust enrichment—“are:
5 (1) the defendant receives a benefit, (2) the received benefit is at the plaintiff’s
6 expense, and (3) the circumstances make it unjust for the defendant to retain the
7 benefit without payment.” *Young v. Young*, 191 P.3d 1258, 1262 (Wash. 2008) (en
8 banc). A contract implied in fact—or quantum meruit—is based upon “an
9 agreement depending for its existence on some act or conduct of the party sought
10 to be charged and arising by implication from circumstances, which according to
11 common understanding, show a mutual intention on the part of the parties to
12 contract with each other. The services must be rendered under such circumstances
13 as to indicate that the person rendering them expected to be paid therefor, and that
14 the recipient expected, or should have expected, to pay for them.” *Id.* at 1262-63.

15 “[U]njust enrichment’ is founded on notions of justice and equity whereas
16 ‘quantum meruit’ is founded in the law of contracts, a legally significant
17 distinction.” *Id.* at 1263. If the same subject matter governs both claims, the
18 implied contract claim should be dismissed. *Woodard v. Boeing Emps. Credit*
19 *Union*, 2023 WL 4847126, at *5-6 (W.D. Wash. July 28, 2023) (on motion to
20

1 dismiss, dismissing implied contract and unjust enrichment claims where an
2 express contract governed the same subject matter).

3 Plaintiffs' Second Amended Complaint sufficiently meets the elements of an
4 unjust enrichment claim: as alleged, Defendants received payment from Plaintiffs
5 in excess of \$100,000 and Plaintiffs allege they did not receive a commensurate
6 benefit in exchange. *See* ECF No. 28 at 7-8 ("As a result of this remittance,
7 Plaintiffs neither have the money they paid Defendants nor the converted van that
8 Defendants promised to deliver – clearly demonstrating that Defendants received
9 the benefit of payment at the expense of Plaintiffs."). Because some of Plaintiffs'
10 payments predated the execution of the parties' formal contract, the Court declines
11 to dismiss this claim as duplicative of the breach of contract claim. The Court thus
12 DENIES Defendants' motion as to this cause of action.

13 *3. Fraudulent Inducement*

14 "There are nine essential elements of fraud, all of which must be established
15 by clear, cogent, and convincing evidence: (1) a representation of existing fact, (2)
16 its materiality, (3) its falsity, (4) the speaker's knowledge of its falsity, (5) the
17 speaker's intent that it be acted upon by the person to whom it is made, (6)
18 ignorance of its falsity on the part of the person to whom the representation is
19 addressed, (7) the latter's reliance on the truth of the representation, (8) the right to
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1 rely upon it, and (9) consequent damage.” *Elcon Const., Inc. v. E. Washington*
2 *Univ.*, 273 P.3d 965, 970 (Wash. 2012) (citation omitted).

3 “To avoid dismissal for inadequacy under Rule 9(b), [Plaintiffs’] complaint
4 would need to ‘state the time, place, and specific content of false representations as
5 well as the identifies of the parties to the misrepresentation.” *Edwards v. Marin*
6 *Park, Inc.*, 356 F.3d 10158, 1066 (9th Cir. 2004) (citing *Alan Neuman Prods., Inc.*
7 *v. Albright*, 862 F.2d 1388, 1392-93 (9th Cir. 1989)).

8 Plaintiffs have sufficiently pleaded the time, place, and content of the
9 alleged misrepresentation, as required under Rule 9(b). *See* ECF No. 26 at ¶ 43
10 (alleging Defendants, in February 2022, misrepresented they had the “requisite
11 experience and expertise to adequately convert Plaintiffs’ van,” including relaying,
12 in telephonic communications, they had the “requisite skills in the field of
13 electrical, carpentry, plumbing, and related subject matters as they pertain to
14 converting a van, as well as having the requisite experience and expertise to
15 incorporate customized facets, materials, and features in the van.”). Plaintiffs’
16 allegations, *see id.* at ¶¶ 43-52, also sufficiently meet the nine elements of fraud, as
17 described above. The Court thus DENIES Defendants’ motion with respect to this
18 cause of action.
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1 4. *Negligent Misrepresentation*

2 Washington has adopted the Restatement (Second) of Torts, which sets forth
3 the elements of a negligent misrepresentation claim: “One who, in the course of his
4 business, profession or employment . . . supplies false information for the guidance
5 of others in their business transactions, is subject to liability for pecuniary loss
6 caused to them by their justifiable reliance upon the information, if he fails to
7 exercise reasonable care or competence in obtaining or communicating the
8 information.” *Havens v. C & D Plastics, Inc.*, 876 P.2d 435, 447 (Wash. 1994) (en
9 banc). “The proof must be clear, cogent and convincing.” *Id.* (citation omitted).
10 As before, the parties dispute whether this claim falls under Rule 9(b). *Compare*
11 ECF No. 27 at 21 (arguing 9(b) is applicable given negligent misrepresentation is
12 “grounded in fraud”) (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-
13 04, 1107 (9th Cir. 2003)), *with* ECF No. 28 at 13-14 (Arguing “*negligent*
14 *misrepresentation* is not *fraud* and Rule 9(b) is inapplicable.”) (emphasis in
15 original).

16 As discussed above, however, because Plaintiffs have sufficiently pleaded a
17 fraudulent inducement claim—one that falls under Rule 9(b)’s stricter standard and
18 involves an *intentional* misrepresentation—Plaintiffs have also necessarily
19 sufficiently plead a negligent misrepresentation claim—one that involves a failure
20 to *exercise reasonable care* in communicating false information. Given the

1 overlapping allegations attendant to both causes of action, the Court DENIES
2 Defendants' motion with respect to this cause of action.

3 5. CPA

4 The CPA provides that “[u]nfair methods of competition and unfair or
5 deceptive acts or practices in the conduct of any trade or commerce” are unlawful.
6 RCW 19.86.020. Washington courts use a five-part test to assess private actions
7 brought under the CPA. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*
8 *Co.*, 719 P.2d 531, 535 (Wash. 1986). Plaintiffs must demonstrate (1) an unfair or
9 deceptive practice or act; (2) in commerce or trade; (3) that affects the public
10 interest; (4) injury to the plaintiffs' business or property; and (5) a causal link
11 between the unfair or deceptive practice or act and the injury suffered. *Id.*

12 Defendants contend Plaintiffs have failed to satisfy the first, third, and fourth
13 elements. ECF No. 27 at 24-26. The Court agrees, though only as to the third
14 element. The Second Amended Complaint lacks facts demonstrating a public
15 interest impact, such as a pattern of deceptive practices or harm to other
16 consumers. *See Hangman Ridge*, 719 P.2d at 538 (“Factors indicating public
17 interest in this context include: (1) Were the alleged acts committed in the course
18 of defendant's business? (2) Did defendant advertise to the public in general? (3)
19 Did defendant actively solicit this particular plaintiff, indicating potential
20 solicitation of others? (4) Did plaintiff and defendant occupy unequal bargaining

positions? As with the factors applied to essentially consumer transactions, not one of these factors is dispositive, nor is it necessary that all be present. The factors in both the ‘consumer’ and ‘private dispute’ contexts represent indicia of an effect on public interest from which a trier of fact could reasonably find public interest impact.”). Accordingly, Plaintiffs have failed to state a viable CPA claim and the Court GRANTS Defendants’ motion with respect to this cause of action.

CONCLUSION

For the reasons discussed above, Plaintiffs’ Second Amended Complaint is dismissed in its entirety.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants’ Motion to Dismiss, **ECF No. 27**, is **GRANTED in part and DENIED in part**.

IT IS SO ORDERED. The District Court Clerk is hereby directed to enter this Order and provide copies to counsel.

DATED June 26, 2025.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES DISTRICT JUDGE